

UNITED STATES OF AMERICA,  
STATE OF CONNECTICUT, and  
STATE OF TEXAS,  
  
Plaintiffs,  
  
v.  
  
CINGULAR WIRELESS CORPORATION,  
SBC COMMUNICATIONS INC.,  
BELLSOUTH CORPORATION, and  
AT&T WIRELESS SERVICES, INC.,  
  
Defendants.

Filed: March 10, 2005

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA” or “Tunney Act”), plaintiff United States moves for entry of the proposed Final Judgment filed in this civil antitrust case. The proposed Final Judgment (which is attached) may be entered at this time without further hearing if the Court determines that entry is in the public interest. There is no objection to the entry of the proposed Final Judgment without a hearing from any of the parties. The Competitive Impact Statement (“CIS”) and Response to public Comments, filed by Plaintiff United States in this matter, respectively, on October 29, 2004 and February 17, 2005, explains why entry of the proposed Final Judgment is in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

## MEMORANDUM

### **I. Background**

Defendants Cingular Wireless Corporation (“Cingular”), SBC Communications Inc. (“SBC”), BellSouth Corporation (“BellSouth”), and AT&T Wireless Services, Inc. (“AT&T Wireless”) entered into an Agreement and Plan of Merger dated February 17, 2004, pursuant to which Cingular would acquire AT&T Wireless. Plaintiff United States and the states of Connecticut and Texas (“plaintiff states”) filed a civil antitrust Complaint on October 25, 2004, seeking to enjoin the proposed acquisition. As explained more fully in the Complaint and CIS, the likely effect of this acquisition would be to lessen competition substantially for mobile wireless telecommunications services and mobile wireless broadband services (collectively, “mobile wireless services”) in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition would result in consumers facing higher prices, lower quality or quantity of mobile wireless services, or delayed launch of new mobile wireless services.

At the same time the Complaint was filed, plaintiff United States also filed a Preservation of Assets Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. A corrected proposed Final Judgment was filed on November 3, 2004.<sup>1</sup> Under the proposed Final Judgment, defendants are required to divest (1) AT&T Wireless’s mobile wireless services business and related assets in five markets (“Wireless Business Divestiture Assets”) (*i.e.*, Connecticut RSA-1, Kentucky RSA-1, Oklahoma City,

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<sup>1</sup>All subsequent references to the “proposed Final Judgment” are to the corrected proposed Final Judgment, which is attached.

Oklahoma RSA-3, and Texas RSA-11); (2) Cingular's or AT&T Wireless's minority interests in other mobile wireless services providers in five markets (*i.e.*, Athens, GA, Pittsfield, MA, St. Joseph, MO, Topeka, KS, and Shreveport, LA); and (3) 10 MHz of contiguous PCS wireless spectrum in three markets (*i.e.*, Dallas, Detroit, and Knoxville). Under the terms of the Preservation of Assets Stipulation and Order, defendants will take certain steps to ensure (a) that these assets are preserved and that the Wireless Business Divestiture Assets are operated as competitively independent, economically viable and ongoing businesses; (b) that they will remain independent and uninfluenced by defendants or the consummation of the transaction; and (c) that competition is maintained during the pendency of the ordered divestiture.

Plaintiffs and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Plaintiffs and defendants have also stipulated that defendants will comply with the terms of the Preservation of Assets Stipulation and Order and the proposed Final Judgment from the date of signing of the Preservation of Assets Stipulation and Order (October 25, 2004), pending entry of the proposed Final Judgment by the Court and the required divestitures. Should the Court decline to enter the proposed Final Judgment, defendants have also committed to continue to abide by its requirements and those of the Preservation of Assets Stipulation and Order until the expiration of time for appeal.

## **II. Compliance with the APPA**

The APPA requires a sixty-day period for the submission of public comments on the

proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, Plaintiff United States filed a CIS in this Court on October 29, 2004; published the proposed Final Judgment and CIS in the *Federal Register* on November 15, 2004, *see* 69 Fed. Reg. 65,633 (2004); and published a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in the *Washington Post* for seven days beginning on November 10, 2004 and ending on November 16, 2004. The 60-day period for public comments ended on January 15, 2005, and two comments were received. Plaintiff United States filed its Response to Public Comments and the comments themselves with this Court on February 17, 2005, and published the Response and the public comments in the *Federal Register* on March 2, 2005. *See* 70 Fed. Reg. 10,114 (2005). The Certificate of Compliance filed simultaneously with this Motion recites that all the requirements of the APPA have now been satisfied. It is therefore appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

### **III. Standard of Judicial Review**

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment “is in the public interest.” *See* 15 U.S.C. § 16(e). In making that determination, the Court shall consider:

- A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- B) the impact of entry of such judgment upon competition in the relevant market

or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its CIS previously filed with the Court on October 29, 2004, Plaintiff United States has explained the meaning and proper application of the public interest standard under the APPA and now incorporates those statements herein by reference. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law. The proposed Final Judgment is within the range of settlements consistent with the public interest.

#### **IV. Conclusion**

For the reasons set forth in this Motion and in the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. Plaintiff United States respectfully requests that the proposed Final Judgment be entered as soon as possible.

Dated: March 10, 2005

Respectfully submitted,

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the Plaintiff's Motion and Memorandum in Support of Entry of Final Judgment have been mailed, by U.S. mail, postage prepaid, to the attorneys listed below, the 10<sup>th</sup> day of March 2005.

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